

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KENRICK DURAN,

Plaintiff,

-against-

COMPLAINT

Jury Trial Demanded

Sergeant HENRY DAVERIN, Shield No. 3631;
Police Officer SAMUEL HUI, Shield No. 28856;
and JOHN and JANE DOE 1 through 10,
individually and in their official capacities (the
names John and Jane Doe being fictitious, as the
true names are presently unknown),

Defendants.

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NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff Kenrick Duran (“plaintiff” or “Mr. Duran”) is a resident of Kings County in the City and State of New York.

7. Defendant Police Sergeant Henry Daverin, Shield No. 3631 (“Daverin”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Daverin is sued in his individual and official capacities.

8. Defendant Police Officer Samuel Hui, Shield No. 28856 (“Hui”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Hui is sued in his individual and official capacities.

9. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

10. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

11. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

12. At approximately midnight on December 25, 2013, Mr. Duran was lawfully in the vicinity of Georgia and Blake Avenues in Brooklyn, New York.

13. As he and family-friends were headed to Mr. Duran's mother's house to celebrate Christmas as well as plaintiff's sister's birthday, plaintiff was unlawfully detained and arrested, assaulted, and thereafter prosecuted on the false charge of disorderly conduct.

14. Without reasonable suspicion or probable cause to believe Mr. Duran had committed a crime, defendants tightly handcuffed him, searched him and put him in a police vehicle.

15. Plaintiff was taken to a police precinct.

16. At the precinct the officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff engage in disorderly conduct and prepared false paperwork including an arrest report.

17. At no point did the officers observe plaintiff commit a crime.

18. Mr. Duran was eventually taken to Brooklyn Central Booking on Christmas Day.

19. On the evening of December 25, 2013, Mr. Duran was arraigned in

Kings County Criminal Court, where the criminal charges were immediately adjourned in contemplation of dismissal.

20. After approximately fifteen hours in custody, plaintiff was released.

21. As a result of this false arrest, Mr. Duran missed Christmas with his family as well as his sister's birthday celebration.

22. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, pain, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
Unlawful Stop and Search

23. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

24. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

25. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

SECOND CLAIM

False Arrest

26. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

27. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

28. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM

Denial Of Constitutional Right To Fair Trial

29. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

30. The individual defendants created false evidence against plaintiff.

31. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

32. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

33. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FOURTH CLAIM
Failure To Intervene

34. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

35. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

36. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

37. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: December 31, 2013
New York, New York

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